

Tecumseh Corrugated Box Company and United Paperworkers International Union, AFL-CIO, CLC

Excavating, Building Material, Construction Drivers, Race Track Employees, Public Employees, Manufacturing, Processing, Assembling and Installer Employees, Local Union No. 436, a/w The International Brotherhood of Teamsters (Tecumseh Corrugated Box Company) and United Paperworkers International Union, AFL-CIO, CLC.¹ Cases 8-CA-29868 and 8-CB-8624

January 12, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

On October 22, 1999, Administrative Law Judge George Alemán issued the attached decision. The Charging Party filed exceptions and a supporting brief, and the Respondent Employer and the Respondent Union filed answering briefs, to which the Charging Party filed a brief in reply.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Thomas M. Randazzo, Esq., for the General Counsel.

¹ As noted by the judge, the complaint was amended at the time of the hearing to reflect that the Charging Party's new name is Paper, Allied-Industrial, Chemical, and Energy Workers International Union, AFL-CIO, CLC (PACE).

² The Charging Party has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Charging Party has also excepted to the judge's finding that the employees' April 21, 1998 meeting with the Teamsters was not "mandatory." We find it unnecessary to pass on this exception because we would reach the same result in this case under all of the circumstances presented, even if, as contended by the Charging Party, the meeting was "a mandatory worktime meeting during which employees were being paid." See *Jolog Sportswear, Inc.*, 128 NLRB 886, 888-889 (1960), *affd.* sub nom. *Kimbrell v. NLRB*, 290 F.2d 799 (4th Cir. 1961).

Jeffrey A. Belkin, Esq., of Cleveland, Ohio, for the Respondent Employer.

John M. Masters and Anna Kern, Esqs., of Cleveland, Ohio, for the Respondent, Teamsters Local Union No. 436.

Carl Bush, Esq., of Nashville, Tennessee, for the Charging Party.

DECISION

GEORGE ALEMÁN, Administrative Law Judge. A hearing in this matter was held on June 9, 1999, in Cleveland, Ohio, pursuant to a consolidated complaint issued by the Acting Regional Director for Region 8 of the National Labor Relations Board (the Board) on February 25, 1999. The complaint alleges that Tecumseh Corrugated Box Company (Tecumseh), the Respondent in Case 8-CA-29868, violated Section 8(a)(1) and (2) of the National Labor Relations Act (the Act) by rendering "unlawful aid, assistance, and support" to, and thereafter recognizing and bargaining with, Excavating, Building Material, Construction Drivers, Race Track Employees, Public Employees, Manufacturing, Processing, Assembling and Installer Employees, Local Union No. 436, a/w the International Brotherhood of Teamsters (the Teamsters), and that Teamsters, the Respondent in Case 8-CB-8624, violated Section 8(b)(1)(A) by accepting Tecumseh's assistance and support, and by obtaining and accepting its recognition. Both unfair labor practice charges were filed on April 29, 1998¹ by Paper, Allied-Industrial, Chemical, and Energy Workers International Union, AFL-CIO, CLC (PACE) (PACE or Charging Party).

All parties were afforded full opportunity to call, examine, and cross-examine witnesses, to present relevant oral and written evidence, to argue orally on the record, and to submit posthearing briefs. The General Counsel, the Charging Party, and Respondents Tecumseh and the Teamsters have each filed posthearing briefs.² On the entire record, including my observation of the demeanor of the witnesses, and after considering the parties' posthearing briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

Tecumseh, a Michigan corporation headquartered in Tecumseh, Michigan, is engaged in the manufacture and sale of corrugated paper and boxes at various locations in the State of Ohio, including a plant in Hebron, Ohio, the facility involved herein.³ In the course and conduct of its operations, Tecumseh annually purchases and receives goods and materials valued in excess of \$50,000 directly from points outside the State of Ohio. Tecum-

¹ All dates are in 1998, unless otherwise indicated.

² The contentions and arguments raised by PACE at the hearing and in its brief for the most parallel that being made by the General Counsel. Accordingly, reference herein to the General Counsel's claims incorporate by implication of similar claims made by PACE. The absence of an express reference in this decision to a particular claim or argument raised by PACE, or for that matter by any other party to this proceeding, is no indication that the claim or argument was not duly considered.

³ Tecumseh has other plants in Twinsburg, Perrysburg (Toledo), and Vanwere, Ohio. The Hebron plant, formerly known as "Custom Cartons," was acquired by Tecumseh on April 17, although the decision to do so was made in May 1997.

seh admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Respondent Teamsters admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Facts

The record reflects that since the 1970's Tecumseh has maintained a collective-bargaining relationship with PACE under which the latter represented Tecumseh's employees at the Tecumseh, Michigan, and Twinsburg, Perrysburg, and Vanwere, Ohio plants. Employees at those facilities are currently covered under one multiple plant agreement between PACE and Tecumseh. Prior to its acquisition by Tecumseh, the Hebron plant, as noted, was separately owned and operated as Custom Cartons. Tecumseh, however, did business with Custom Cartons prior to acquiring it for the record shows that Tecumseh drivers often delivered Tecumseh products to that facility. One such driver was Steve Ernst, President of PACE Local 60 at the Toledo plant.

Called as a witness by the General Counsel, Ernst testified that from mid to late 1996, through April 21, 1998, he often spoke with Custom Carton employees Scott McDonald and Bill Darnes about the benefits of unionizing during delivery trips to that facility (Tr. 136, 141). He claims he told them about the benefits employees at the Tecumseh plants were receiving, and showed them copies of the collective-bargaining agreement PACE had with Tecumseh. Ernst recalls handing McDonald during one such conversation a business card belonging to PACE International Representative, John McClaren (Tr. 139). In late 1997 during one of his visits to Custom Cartons, Ernst purportedly observed Tecumseh's upper management, and in particular its Executive Vice President Jerry Hebb, touring the plant, from which he surmised that Tecumseh might be contemplating acquiring Custom Cartons. Ernst claims that this visit by Tecumseh officials to Custom Cartons caused him to increase his efforts to get the Custom Cartons employees interested in PACE, by engaging them in further discussions, a process he claims he continued through April 21 (Tr. 141).⁴ Ernst claims he was not the only Tecumseh driver to discuss PACE with Custom Cartons employees but that "all the drivers" from Tecumseh also did so.

Tecumseh management, Ernst further claims, and in particular Toledo Plant Manager Bill Faling and Production Manager Rob Waynick, were fully aware that he and other Tecumseh drivers were discussing unionization with Custom Carton employees, and explained in this regard that he and other employees "would joke, laugh, and talk with them about it" and "tell them what was going on." Ernst testified that in December 1997, Faling and Waynick abruptly and unexpectedly informed him and other Tecumseh drivers that they were not to enter the

Custom Cartons facility when making deliveries, which he suggests had been the practice, but were instead to remain in the Custom Cartons dock loading area while their vehicles were unloaded. This new restriction, Ernst contends, meant that he and other drivers were limited in their ability to discuss PACE with, or to organize, Custom Cartons employees and, consequently, were only able to talk to those employees who happened to be outside the facility during their breaks. Despite his attempt to portray himself and other Tecumseh drivers as actively engaged in efforts to organize Custom Cartons employees, Ernst admits that from 1996 through April 21, 1998, PACE's "organizing drive" consisted of nothing more than the brief conversations he had with McDonald and "one or two other people, and his handing of a PACE business card to McDonald. He further admits that he never personally solicited PACE authorization cards from any Custom Cartons employee, and did not know if any other PACE representative had done so.

Ernst claims that on April 21, as he was making a delivery to Custom Cartons, he was met by McDonald who told him that the Teamsters had been invited to speak to employees that day, and that employees at the meeting signed Teamsters' authorization cards. McDonald purportedly told Ernst that the Teamsters' representatives had stated that the cards would be used to determine if employees were interested in a union, not specifically the Teamsters. Ernst, however, told McDonald that the employees' signature on the Teamsters' cards meant that "the Teamsters represented the bargaining unit." (Tr. 142, 154.)

McDonald was not asked about, and consequently did not confirm, the above April 21 conversation alluded to by Ernst. He did, however, testify to having spoken with Ernst during the latter's visits to Custom Cartons, and claims that during such visits, Ernst often spoke to him, Darnes, and to another employee, Art Grigsby, about organizing themselves and other employees at that facility. He testified that during one such visit, Ernst showed him a copy of a contract PACE had with Tecumseh which described the pay and benefits employees were receiving at the latter's facilities. (Tr. 42, 55-56.) McDonald claims to have been present when Ernst observed Hebb and other Tecumseh officials touring the Custom Cartons facility but testified this occurred only "a couple of weeks before" April 21, 1998, not in late 1997 as testified to by Ernst. (Tr. 55.) He also recalled receiving a business card from McDonald in March 1997, but could not recall who the card belonged to, stating at first that the card was that of PACE representative Dave Pratt, but then stating, with some memory jogging by PACE's counsel, that the card might have belonged to Rick Vermillion, another PACE representative. (Tr. 96.) However, his testimony in this regard is again at odds with Ernst's claim that the card he gave to McDonald belonged to PACE representative McClaren, not to Pratt or Vermillion.

McDonald testified that at no time prior to April 21 was he ever given or asked to sign a PACE authorization card by Ernst or any other PACE representative, and never attended any organizational meeting conducted by PACE at Custom Cartons or had knowledge that any such meetings were ever held. (Tr. 71.) Finally, despite his testimony that Ernst engaged in efforts to have him, Darnes, and Grigsby organize themselves, McDonald

⁴ McDonald's testimony, that Ernst's observation of the Tecumseh management officials' tour of the Custom Cartons facility occurred "a couple of weeks before" April 21 (Tr. 54-55), conflicts with Ernst's claim that this incident took place in late 1997. There is nothing in their respective versions to suggest that they may have been referring to different events.

also testified, in somewhat of an inconsistent manner, that no organizational activity ever took place among Custom Cartons' employees prior to April 21, 1998, and that Ernst never made any attempt to personally engage him in such activities. (Tr. 42–43; 88.)

The reliability of McDonald's testimony is further clouded by his confusing, if not internally inconsistent, account of when he and Ernst held their conversations. For example, while he stated on direct examination that these conversations took place in March 1997, his testimony on cross-examination by Tecumseh's counsel suggests that they occurred in March 1998 (Tr. 42, 73). It may very well be that McDonald became confused by counsel's question since his answer came in response to counsel's reference to his March 1998 conversations with Ernst. Yet, McDonald made no effort to clarify his answer or to correct counsel's misstatement as to the correct timing of these alleged conversations. On further cross-examination, however, McDonald reverted to the March 1997 timeframe (Tr. 86).

On April 17 Tecumseh, as noted, purchased Custom Cartons. On April 21 Tecumseh's Human Relations Vice-President, Jan Moden, held a mandatory meeting of Hebron's (formerly Custom Cartons) employees to inform them of the acquisition, and of the changes that would be occurring.⁵ Also attending this meeting at Moden's invitation were Teamster business agents Christopher Pavone and Anthony Fioco. Moden explained that Pavone was invited to attend on instructions from Tecumseh's owner, Jeff Robideau. According to Moden, at some point prior to Tecumseh acquiring Custom Cartons, Teamster's president, Gary Tiboni had been at a meeting with Robideau when the former broached the subject of representing Custom Cartons' employees with Robideau. Thus, she testified that at this meeting, Tiboni told Robideau that if Tecumseh "ever got to the point where [it] was going to purchase [Custom Cartons]," to let him, Tiboni, know (Tr. 180).⁶ Moden claims that following that conversation, Robideau mentioned to her that Tiboni was with the Teamsters, and instructed her to "call [Tiboni] so he knows who you are, and if we get to the point where we are going to sign the final papers [e.g., purchase Custom Cartons] you may need to talk to him and let him know when you're going to have a meeting with the employees" (Tr. 191). Robideau, Moden further claims, had been impressed by the Teamsters, as evident by a conversation she purports to have overheard between Robideau and Jerry Hebb during which the former expressed those sentiments (Tr. 183). Moden's above testimony that Tiboni first raised the issue of the Teamsters representing employees at Custom Cartons should Tecumseh acquire the facility, and as to what Robideau

may have said to her, was not challenged at the hearing and is, therefore, credited.

After addressing the employees, Moden introduced Pavone and Fioco to the 22 employees present, and then she and the other management officials immediately left the meeting. Moden testified that while her portion of the meeting was mandatory, employees were not required to stay for the Teamster portion of the meeting. She recalls telling employees that while Tecumseh liked to work with unions, "it was their choice if they wanted to become union." After Moden and the other management individuals left, Pavone introduced himself and Fioco as Teamsters' representatives, stated he was there to talk about the Teamsters, gave a brief description of the Local and who it represented, and then expressed to employees his interest in organizing them. Pavone testified, and McDonald admits, that at one point during his presentation, McDonald asked, "Where were you two years ago?" to which he replied that the Teamsters was unaware of Custom Cartons and its employees 2 years ago. (Tr. 68)

Pavone went on to discuss authorization cards with employees, showed them the cards they would be asked to sign, and made clear to employees that by signing the cards they would be authorizing the Teamsters to "represent [them] in collective bargaining and doing a contract and so on with the company" (Tr. 201).⁷ He also explained that if the Teamsters got enough signed cards, it would seek voluntary recognition from Tecumseh, that Tecumseh had the option of not granting it recognition and that, if voluntary recognition could not be obtained, the Teamsters would petition the Board for an election. Pavone claims that at no time during this meeting was PACE or any other union discussed or mentioned. After Pavone finished with his remarks and answered employees' questions, McDonald asked Pavone to distribute the authorization cards to employees and Pavone, aided by Fioco, did so.

Approximately 10–15 minutes later, Pavone collected signed authorization cards from the 22 employees. McDonald admits he read and understood what was on the card before signing it. (Tr. 46, 78) He claims, however, that Pavone assured employees that signing a Teamsters card "didn't mean anything," that it was just to see "how many people would be interested in a Union," and that "the company would not see the names of the people that signed the cards." (Tr. 44, 46.) His testimony in this regard, thus, conflicts with Pavone's claim that employees were told of the card's true purpose. After receiving the signed cards, Pavone answered some more questions relating to union dues and on how a contract would be negotiated.

The General Counsel's witness, Matthew Calendine, also testified about the April 21 meeting with the Teamsters. At this meeting, Pavone, he recalls, told employees that the Teamsters were invited by Tecumseh or Moden to speak to them about forming a union, and that he wanted to know if employees were

⁵ Moden explained that attendance at the meeting, which was held in a lunch or breakroom, was mandatory and that if any employee did not want to attend they would either have to clock out, and, thus, not get paid, or explain to her where they would be (Tr. 192–193).

⁶ Thus, it would appear from Moden's undisputed testimony that it was not Tecumseh who first contacted the Teamsters regarding the representation of employees at Custom Cartons, as the General Counsel suggests on brief, but rather Teamsters' president, Tiboni, who first expressed such an interest to Robideau.

⁷ The Teamsters authorization cards contain the words "AUTHORIZATION FOR REPRESENTATION" at the very top, and a subsequent paragraph which reads, "I authorize Local Union No. 436, International Brotherhood of Teamsters, to represent me in collective bargaining and to negotiate an Agreement concerning my rates of pay, hours of work and other working conditions" (JRX–2).

truly interested in doing so. He claims Pavone “talked a little about getting a contract together with Tecumseh, so our wages and benefits would be better,” and mentioned that he had authorization cards for employees to sign to let Tecumseh know that they wanted a Union. Calendine admits signing a card. Asked if he read the card before signing it, Calendine testified on direct examination that he “somewhat” did so; however, on cross-examination he testified he read only the words “Authorization for Representation” found at the top of the card. Calendine, like McDonald, claims Pavone told employees the cards “didn’t mean anything . . . except to show the company that a majority of the employees wanted a Union in the shop.”⁸ (Tr. 102.)

After collecting the signed cards, Pavone went to Moden’s office, told her he had a “unanimous stack of cards,” and asked if she would voluntarily recognize the Teamsters as the Hebron employees’ collective-bargaining representative following a card check. Pavone suggested that if Moden wished, she could have someone else verify the employee signatures on the cards. Moden, however, agreed to perform the card check herself. Moden corroborated Pavone’s above description of what transpired between the two. She testified that on receipt of the cards, she compared the signatures thereon with the employees’ signatures found on Ohio tax forms or medical benefits forms contained in their personnel files and, satisfied that the signatures on the cards were authentic, concluded that the Teamsters enjoyed majority support among employees at the Hebron facility and agreed to recognize the Teamsters.⁹ Moden and Pavone then executed a “Recognition Agreement” which had been prepared in advance of the meeting which effectively granted recognition to the Teamsters as the exclusive collective-bargaining representative of certain of Tecumseh’s Hebron employees.¹⁰ Following his meeting with Moden, Pavone went back to the employees, informed them of Tecumseh’s voluntary grant of recognition, and then proceeded to walk through the plant to announce the decision. Pavone claims he told employees as he walked through the plant that he would be returning in a week or two to organize a bargaining committee and discuss proposals with them. Calendine corroborated Pavone’s claim that he announced Tecumseh’s recognition of the Union to employees and then walked through the plant. (Tr. 102, 208.)¹¹

⁸ I credit Pavone over Calendine and McDonald and find that Pavone told employees that by signing cards, employees were authorizing the Teamsters to represent them in collective bargaining, and that on receipt of the signed cards, he would demand recognition from Tecumseh. Neither McDonald nor Calendine, as discussed *infra*, were credible witnesses.

⁹ The General Counsel and PACE do not challenge the authenticity of the signatures on the Teamsters’ cards (Tr. 83).

¹⁰ The bargaining unit consists of “all production and maintenance employees employed by the Company at its Hebron, Ohio plant; excluding professional employees, managerial employees, guards and supervisors as defined in the Act” (GGX-2).

¹¹ Although corroborating Pavone’s testimony that the latter told employees of Tecumseh’s voluntary recognition of the Teamsters, and that he walked through the plant announcing the decision, Calendine testified that he understood Pavone’s comments to mean that Tecumseh was “going to let us have a Union of our choice.” Regardless of what Calendine might have understood, his testimony makes clear that

McDonald testified that soon after the April 21 meeting, his immediate supervisor, Dave Alexander, approached him and asked, “Why the f—k did you guys sign the cards for the Teamsters? That’s what they wanted in here” (Tr. 51).¹² He and Calendine both testified that on April 24, 3 days after the Teamsters were granted recognition, the Hebron employees attended a meeting held by PACE at a local café during which, after some discussion among employees as to which union they wanted, those present signed PACE authorization cards distributed by PACE representatives McClaren and Pratt. (Tr. 92, 106) Asked why he and other employees signed PACE cards when they had just signed cards for the Teamsters 3 days earlier, McDonald admitted that he and the other employees had simply changed their minds as to which union they wanted to represent them (Tr. 95).¹³ Calendine offered no similar explanation for filling out a PACE card. He did, however, admit to having backdated the PACE card to April 21 at the suggestion of a former employee identified only as “Allen” (Tr. 132). Calendine was unsure if the other PACE cards signed by employees that day had also been backdated to April 21. The PACE cards were not produced at the hearing. On April 27 PACE filed a petition for an election with the Board (Tr. 50).

McDonald also testified to having attended several meetings after April 21, at which employees expressed opposition to being represented by the Teamsters. One such meeting allegedly took place between Hebb and employees 1 week after the April 24 PACE meeting, e.g., April 30 or May 1. At that meeting, an employee, who McDonald did not identify, “asked the question that we did not want them [Teamsters] to represent us.” Hebb, McDonald claims, replied that he could not discuss the Union, that the matter would be tied up in court, and that it would take 3–4 years for employees to get representation.

Pavone told employees that the Respondent had voluntarily recognized the Teamsters as the employees’ duly chosen collective-bargaining representative. Calendine, it should be noted, admits never having asked Pavone what he meant by his remarks regarding Tecumseh’s voluntary grant of recognition (Tr. 116). I am, however, convinced, from Pavone’s testimony, which I credit, that the concept of voluntary recognition was fully explained to employees by Pavone during the April 21, meeting, and that Calendine, who was at the meeting, could not have misunderstood what had just occurred.

¹² McDonald initially testified that he first learned 2 weeks after the April 21 meeting that Tecumseh had in fact granted recognition to the Teamsters. However, when confronted with contrary statements contained in his sworn affidavit to the Board, McDonald admitted that he knew of said recognition on April 24 (Tr. 79, 81). I am nevertheless convinced, based on Pavone’s credited testimony that he told employees of Tecumseh’s recognition soon after his April 21 meeting with Moden, and that McDonald in fact was fully aware of the grant of recognition on April 21.

¹³ McDonald at the hearing denied that Pratt ever told employees at the April 24, PACE meeting, that signing a PACE card “didn’t mean anything.” His testimony in this regard, however, again contradicts a statement in his sworn affidavit that Pratt told employees that since employees had already signed Teamsters’ authorization cards, the PACE cards “did not mean anything.” McDonald failed to provide an adequate explanation for this contradiction but did suggest, somewhat incredulously, that the inconsistency, in all likelihood, was the result of “a typing error” (Tr. 93–94).

Hebb then went on to discuss Tecumseh's plans for the Hebron facility and the new equipment that was to be installed. (Tr. 52.) McDonald testified to another meeting, this time with the Teamsters, allegedly held 2 weeks after April 21 (e.g., May 7), at which employee Vicki Petty told Pavone that "we did not want the Teamsters to represent us." Pavone, according to McDonald, replied, "Well, if you don't want us to represent you, we'll leave you alone; we'll go away."

McDonald also recalled another meeting with the Teamsters 1 week later (e.g., May 14) where the issue of employees not wanting to be represented by the Teamsters was again brought up. Pavone's response this time, according to McDonald, was that Tecumseh had already granted recognition to the Teamsters, and that the Teamsters "was going to fight it all the way, and that it would probably be wrapped up in court for three to four years." McDonald claims that soon after this meeting, Pavone asked him and Calendine to accompany him outside the facility. Once outside, Pavone told the two that he "needed somebody right now to get these people to make up their mind and figure out what they're going to do," and added that McDonald and Calendine were the ones "that could get these people to get them going to vote them in," and that "we could be making like, four more dollars on the hour if we'd get them in there."

Calendine also testified to a conversation he had with Pavone some 3-4 weeks after April 21, during which McDonald was present, and which presumably is the same one alluded to by McDonald above. His version of this meeting, however, varies significantly from McDonald's version of what occurred. Thus, according to Calendine, Pavone approached the two, asked how it would feel to make more money, and then asked about how other employees were feeling. Calendine replied that employees were afraid and did not know what was going on, at which point Pavone asked him and McDonald to accompany him (Pavone) to Dave Moore's office to discuss the matter further. Calendine and McDonald agreed to do so. When they got to Moore's office, Moore allegedly told them how much money Tecumseh was spending on machinery and improvements at the Hebron facility, and assured them no one would be losing their jobs. Calendine claims that at one point during this meeting, Pavone remarked that employees "could still go out and get any other Union to represent them." (Tr. 107-109)

McDonald also testified to another meeting with Hebb during the third week in May, at which Hebb stated that Tecumseh had recognized the Teamsters and that no other union would be recognized "for three or four years" (Tr. 58-62). Finally, McDonald claims that on three separate days 1 week before the hearing in this matter, his supervisor, Alexander, told him that one of Tecumseh's secretaries had been subpoenaed to testify on management's behalf to "make sure she was asked the right questions about a [management] meeting" that was held right after the April 21 employee meeting. McDonald alleges that he was told by Alexander that at this post-April 21, management meeting, Moden had remarked that Tecumseh wanted the Teamsters, and not PACE, to represent its employees (Tr. 64).

Calendine also gave testimony regarding discussions he purportedly had with Pavone after the April 21 meeting. One such

conversation, he claims, occurred in Moore's office a few weeks after April 21. Calendine testified that Moore called him to his office that day and mentioned that Pavone was trying to get a hold of him, but that as Pavone did not have Calendine's phone number, he (Pavone) asked Moore if he could get Calendine to call him. Calendine told Moore he had no objection to speaking with Pavone, at which point Moore called Pavone from his office. On reaching Pavone, the latter suggested that the conversation be put on the speakerphone, and then asked if Calendine could talk to employees about getting volunteers to help the Teamsters negotiate a contract with Tecumseh. Calendine agreed to ask around but remarked to Pavone that he "didn't think that [the employees] were interested" (Tr. 105).¹⁴

The record reflects that McDonald and Calendine both served on the Teamsters' negotiating team and took part in the contract talks which resulted in a collective agreement being reached and ultimately ratified by employees sometime late, possibly November, in 1998.

Discussion and Findings

The General Counsel contends that by allowing the Teamsters to come onto its property on company time to meet with and solicit its employees, and thereafter granting recognition and bargaining with the Teamsters "at a time when it had reason to know" of PACE's interest in representing those same employees,¹⁵ Tecumseh rendered unlawful aid, assistance, and support to the Teamsters in violation of Section 8(a)(2). (GCB: 14.) I disagree.

Initially, I am not convinced that PACE, at any time prior to Tecumseh's April 21 voluntary grant of recognition to the Teamsters, engaged in efforts to organize employees at Custom Cartons, or that it had, in some other fashion, overtly demonstrated some interest in representing employees at that facility. The only evidence of any such alleged organizational attempt by PACE came in the form of testimony from Ernst and McDonald, both of whom I find were not particularly credible witnesses. McDonald's testimony, as shown above, is full of contradictions and inconsistencies that were not adequately or

¹⁴ Calendine gave this description of the conversation in response to a question from the General Counsel on whether Calendine had ever mentioned to the Teamsters that employees "didn't want the Teamsters to represent the employees" (Tr. 103). Nothing in this alleged conversation, however, suggests that Calendine ever informed Pavone that employees did not want to be represented by the Teamsters. Thus, assuming the truth of Calendine's testimony that such a conversation occurred, which I seriously doubt, Calendine's assertion of having told Pavone that employees were not interested reflected nothing more than his personal view on whether other employees would be willing to serve on the bargaining committee, and not whether employees wanted the Teamsters to represent them.

¹⁵ In defining the issues in the case, the General Counsel, in framing the issues in the case, states that Tecumseh rendered unlawful assistance and support to the Teamsters "at a time when it had reason to know of the organizational interest of another labor organization." (GCB:2). In essence, the General Counsel is therefore asserting that Tecumseh should not only have known that the Hebron employees "would likely be interested" in being represented by PACE, but that it also had reason to know that PACE was "interested" in representing said employees.

plausibly explained. When considered in light of his overall poor demeanor on the witness stand, McDonald's overall testimony is simply not worthy of belief. Ernst likewise exhibited a poor and less than candid demeanor as a witness. At times during cross-examination, Ernst was evasive and seemed more willing to spar with opposing counsel than to answer the questions put to him in an honest and straightforward manner. Further, much of his testimony as to the discussions he avers to have had with McDonald was not fully corroborated by the latter. Thus, while McDonald agrees that Ernst showed him copies of Tecumseh's contracts with PACE, and suggested that he, McDonald, and other employees consider organizing themselves, they do not agree as to when these conversations occurred. Further, while McDonald agrees that Ernst gave him a business card from a PACE representative, they disagree on whose card it was that McDonald allegedly received. Nor did McDonald confirm Ernst's testimony that the two spoke soon after the April 21 Teamsters' meeting with employees.

In sum, I credit neither McDonald or Ernst and, consequently, do not believe that the two engaged in any of the pre-April 21 conversations to which they testified regarding PACE. Likewise, I reject as not credible Ernst's claim that Tecumseh management knew that he and other Tecumseh drivers were discussing PACE with employees at Custom Cartons, or engaged in efforts to organize them, during their delivery trips to that facility before April 21, or his further claim of being instructed by Tecumseh management to refrain from engaging in such discussions with Custom Carton employees during his visits to that facility. Rather, the manner in which they testified, and inconsistencies in their account and timing of these alleged conversations, leads me to believe that Ernst and McDonald in all likelihood concocted these alleged meetings and conversations after the fact to create the impression that PACE was engaged in some form of organizational activity at Custom Cartons prior to its acquisition by Tecumseh. Indeed, McDonald's own testimony makes clear that no such organizational activity was being undertaken by PACE at any time prior to the April 21 meeting. Accordingly, I find no credible evidence to support the General Counsel's assertion that Tecumseh, prior to April 21, "had reason to know" of PACE's interest in representing its employees at the Hebron facility. PACE, I conclude, demonstrated no interest whatsoever in representing the Hebron employees until April 24, 3 days after the Teamsters received signed authorization cards from a majority of employees at the Hebron facility, and recognition from Tecumseh.¹⁶

¹⁶ Even if I were to believe, which I do not, that PACE was attempting to organize Custom Cartons' employees before April 21, and that Tecumseh had knowledge of such activity, Tecumseh's grant of recognition to the Teamsters would nevertheless not be unlawful. In *Bruckner Nursing Home*, 262 NLRB 955 (1982), the Board held that it would no longer find 8(a)(2) violations in rival union, initial organizing situations when an employer recognizes a labor organization which represents an uncoerced, unassisted majority, before a valid petition for an election has been filed with the Board. Id. at 957.¹⁶ PACE, as noted, did not file a petition with the Board until April 27, 6 days after Tecumseh's April 21 recognition of the Teamsters. In fact, PACE, as further noted, did not begin to solicit authorization cards from Hebron employ-

In fact, except for McDonald's testimony, which, as noted, is not credible, there is nothing in the record to suggest that employees at Custom Cartons were even aware of PACE's existence, or that they knew it represented employees at Tecumseh's other facilities.¹⁷ Consequently, I fail to see how, as claimed by the General Counsel, Tecumseh could be expected to know that employees at the Hebron plant purportedly favored representation by PACE when, in all likelihood, the employees themselves may not have even heard of PACE or known of its representative status at Tecumseh's other plants. Accordingly, the General Counsel's claim that Tecumseh should have known of PACE's alleged interest in representing Custom Cartons' employees or, for that matter, that those employees would have preferred to be part of the overall bargaining unit already being represented by PACE at Tecumseh's other plants is, at best, speculative and clearly insufficient to support a finding that Tecumseh unlawfully aided or assisted the Teamsters or that it somehow manipulated the Hebron employees into supporting the Teamsters rather than PACE.

As to Tecumseh's conduct in allowing the Teamsters to address its employees on company time and property, the Board has long held that such conduct, without more, does not amount to unlawful assistance within the meaning of Section 8(a)(2) of the Act. *Jolog Sportswear, Inc.*, 128 NLRB 886, 888-889 (1960); affd. sub nom. *Kimbrell v. NLRB*, 290 F.2d 799 (4th Cir. 1961); *Longchamps, Inc.*, 205 NLRB 1025 (1973). As credibly testified to by Moden, the purpose of the April 21 mandatory meeting was to notify Custom Cartons employees of Tecumseh's acquisition of the Hebron facility and to inform them of the changes that would be taking place. Although the Teamsters were permitted to address employees following Moden's presentation, Moden's testimony makes clear that employees were not required to remain during the Teamster's presentation. Further, it is undisputed that Moden, along with other supervisors who were present when Moden spoke to employees, left the room once the Teamsters representatives were introduced, and consequently were not present when employees received and signed their authorization cards.¹⁸

ees until April 24, again, after the Teamsters had already obtained majority support from those employees and recognition from Tecumseh. Thus, under *Bruckner*, the mere fact that PACE may have shown an interest in representing employees of Custom Cartons prior to April 21, or been actively engaged in organizing those employees before that date, would not, without more, be sufficient to render unlawful Tecumseh's recognition of the Teamsters.

¹⁷ Calendine, the only other Custom Cartons employee to testify besides McDonald, admitted that while he knew when he signed the Teamsters' authorization card that employees at Tecumseh's other operations were represented by a union, he did not know which union was representing those employees (Tr. 103). His further testimony, that some of the Hebron employees at the April 21 meeting asked Pavone if the Teamsters also represented employees at Tecumseh's other facilities, strongly suggests that some, if not all, of the Hebron employees were unaware that PACE was the bargaining representative for all of Tecumseh's other employees. (Tr. 102-103)

¹⁸ *Vernitron Electrical Components*, 221 NLRB 464 (1975), and *Fountain View Care Center*, 317 NLRB 1286 (1995), cited by the General Counsel on brief (GCB: 11, 13), and which involved findings by the Board of 8(a)(2) unlawful assistance provided by employers to a

While the General Counsel acknowledges that an employer does not, per se, violate the Act merely by making its premises available on company time to a union seeking to organize its employees, he nevertheless contends that there are other factors which, when viewed together with Tecumseh's grant of access to the Teamsters, amply support a finding that Tecumseh's conduct "exceeded the permissible 'benign cooperation' approved by the Board" and amounted to an "unlawful interference with the employees' free choice of their bargaining representative." (GCB:10-11) Specifically, the General Counsel cites four factors which he contends support a finding that Tecumseh was not a neutral party but instead unlawfully aided and assisted the Teamsters. Thus, the General Counsel argues that Tecumseh (1) could reasonably have expected, based on its longstanding collective-bargaining relationship with PACE, "that the former Custom Carton employees would likely be interested in joining the bargaining unit represented by PACE at its other plants; (2) solicited the Teamsters to organize the Custom Carton employees despite the fact that the Teamsters had not independently evinced any interest in the Hebron unit; (3) implicitly conveyed its preference for the Teamsters when Moden told employees at the April 21, meeting, just before introducing the Teamsters' representatives, that Tecumseh liked working with unions; and (4) immediately granted recognition to the Teamsters after performing its own, rather than a neutral, card check (GCB:13). I find no merit in the General Counsel's arguments.

As to his contention that Tecumseh could have expected Custom Cartons employees to be favorably inclined to being part of the overall bargaining unit represented by PACE, that claim, as previously discussed, is based on pure speculation and not on any credible evidence of record. While there is some evidence to suggest that Custom Cartons employees may have signed authorization cards for PACE,¹⁹ the record makes clear

union, are factually distinguishable from the instant case. In *Vernitron*, unlike here, the employer's supervisors remained present during a meeting conducted by a union on the employer's premises and observed employees sign authorization cards. Further, the meeting in *Vernitron*, which all employees were required to attend, was called for the specific purpose of having the union address and solicit cards from employees. In the instant case, the April 21 meeting which employees were required to attend was called for the purpose of discussing matters pertaining to Tecumseh's acquisition of Custom Cartons and to inform employees of changes that would be occurring resulting from the acquisition. While the Teamsters were subsequently allowed to address employees at this meeting, employees, as noted, were not required to remain for the Teamsters' presentation. In *Fountain View Care Center*, the employer was found to have unlawfully assisted a union by distributing and soliciting signed authorization cards from its employees, by coercively telling prospective employees that employment was conditioned on their becoming members of the assisted union, and by distributing authorization cards along with job applications to applicants, conduct which was found to have tainted the signatures on the cards. Here, Tecumseh has engaged in no such conduct.

¹⁹ The PACE cards, as noted, were never offered into evidence or for that matter produced at the hearing. Thus, the circumstances surrounding the signing of those cards, including their validity, are not known. Indeed, McDonald's testimony that he intentionally backdated his PACE authorization card to reflect that it was signed on April 21 instead of April 24 strongly suggests the likelihood that the PACE cards

that such cards were signed three days after the Teamsters had obtained signed valid authorization cards from those very same employees and the latter labor organization had been granted recognition by Tecumseh. Further, as previously found, there is simply no credible evidence to suggest that Custom Cartons employees were aware of PACE's existence before April 21, or that it represented Tecumseh's other employees. Given these circumstances, it is highly unlikely that Custom Cartons employees could have preferred representation by PACE over the Teamsters at any time before April 21, and just as unlikely therefore that Tecumseh could have known, or received some indication from said employees, that they wished to be part of the overall bargaining unit represented by PACE at Tecumseh's other plants.

The second factor cited by the General Counsel, that Tecumseh solicited the Teamsters to organize the Custom Cartons employees, requires little discussion and is likewise without merit for, as previously found, it was Teamsters president Tiboni who first expressed his interest in representing employees at Custom Cartons to Tecumseh president Robideau, and not vice versa, as claimed by the General Counsel.

Nor do I agree with the General Counsel that there was anything improper in Moden's April 21, comment to employees that Tecumseh liked working with unions, for it is well-settled that absent a threat of reprisal, promise of benefit, or other coercion, an employer is free under Section 8(c) of the Act to express its views on whether employees should choose a labor organization to represent them, or to express its preference for one union over another, or whether they should choose any labor organization to represent them.²⁰ *Bernhardt Bros. Tugboat Service*, 142 NLRB 851, 862 (1963); *Guard Services*, 134 NLRB 1753, 1766 (1961); *Electromation, Inc.*, 309 NLRB 990, 1013 (1992).²¹ While Tecumseh admits, on brief, that it preferred dealing with the Teamsters at its newly acquired Hebron facility, it further asserts, credibly in my view, that at no time did it make its preference known to employees, a claim fully supported by both McDonald and Calendine. Thus, McDonald testified that Moden never mentioned the Teamsters when she made her remark and only made reference to unions in general, and further admitted that at no time before or during the meet-

may have been filled out in a fraudulent manner so as to create the impression that PACE obtained signed authorization cards from a majority of the Custom Cartons employees on the same day the Teamsters met with employees, thereby rendering the validity of the PACE cards highly suspect. I make no finding regarding the validity or invalidity of the PACE cards as they were never produced or raised as an issue in this case. However, given the suspect nature of the PACE cards, I do not agree with the General Counsel's implicit suggestion on brief that said cards somehow serve as evidence that the Custom Cartons employees favored PACE over the Teamsters.

²⁰ Sec. 8(c) states, in relevant part, that "[t]he expression of any views, argument, or opinion . . . shall not constitute or be evidence of an unfair labor practice . . . if such expression contains no threat of reprisal or force or promise of benefit."

²¹ Moden's remark is not alleged to be unlawful in and of itself. Rather, the General Counsel alleges only that when viewed together with Tecumseh's other conduct, the remark lends further support to a finding that Tecumseh provided the Teamsters with unlawful assistance.

ing was he urged or encouraged to sign a Teamsters authorization card. Calendine similarly testified that at no time prior to the April 21 meeting was he ever talked to by Tecumseh management about joining the Teamsters, and that in her April 21 remark, Moden never told or otherwise suggested to employees that they join the Teamsters or sign authorization cards on its behalf. Calendine, in fact, understood that the purpose of the meeting with the Teamsters was simply to hear what the Teamsters had to say, and believed he was free to do whatever he wanted to do at the meeting. (Tr. 67; 110–111.) In sum, not only does Moden's remark contain no coercive overtones, but there is also no evidence, and indeed no allegation, of any threat or promise of benefit directed at employees by Tecumseh either before or after April 21, to induce them into supporting the Teamsters. Accordingly, I find Moden's remark about Tecumseh's preference for unions to be nothing more than an expression of opinion permissible under Section 8(c), and consequently dismiss as without merit the General Counsel's suggestion that Tecumseh, through its statement of preference, unlawfully aided, assisted, or supported the Teamsters in organizing its employees.

Nor do I find disturbing or improper the fact that Tecumseh did not utilize an independent source to verify the employee signatures on the Teamsters authorization cards before recognizing the Teamsters or that it granted the Teamsters recognition immediately after the April 21 meeting, for I find nothing in the case law, nor has the General Counsel or the Charging Party cited any, that requires an employer to conduct an independent card check before granting recognition to a union, or which requires an employer to undergo a waiting period prior to such a grant of recognition. In fact, in *New England Motor Freight*, 297 NLRB 848 (1990), a somewhat analogous case, the Board dismissed 8(a)(2) allegations against an employer who, like Tecumseh here, had granted a union recognition based on its own card check and immediately following a meeting conducted by the union on the employer's property during which the authorization cards were solicited and signed. In *Coamo Knitting Mills, Inc.*, 150 NLRB 579 (1964), the Board likewise found no 8(a)(2) violation where the employer had granted recognition to a union without an independent card check 1 day after the union had been permitted to address employees on the employer's premises. Like the employers in *New England Motor Freight* and *Coamo Knitting Mills*, Tecumseh here has done nothing more than allow the Teamsters to address and solicit signed authorization cards from employees on company property. As there is no evidence here that Tecumseh engaged in any coercive behavior, its conduct in granting recognition to the Teamsters immediately after the April 21 meeting, based solely on Moden's card check, in my view, cannot, without more, give rise to a finding that Tecumseh provided the Teamsters with unlawful aid, assistance, and support within the meaning of Section 8(a)(2) of the Act.²²

²² This is not to suggest that an employer's hasty recognition without an independent card check is of no relevance in determining whether or not an employer has provided unlawful assistance to a union in violation of Sec. 8(a)(2). Thus, in finding that the employer in *Vernitron* had unlawfully assisted the union, the Board indeed considered relevant

In summary, I find that the General Counsel has not established that Tecumseh provided the Teamsters with aid, assistance, or support of the kind prohibited by Section 8(a)(2) and shall accordingly, recommend that the complaint allegations against it be dismissed. Given my finding in this regard, I further find that the Teamsters did not violate Section 8(b)(1)(A) of the Act, as further alleged in the complaint, when it accepted Tecumseh's offer to address its employees at the Hebron facility on April 21, or by thereafter accepting recognition from and engaging in collective bargaining with Tecumseh. I shall, therefore, likewise recommend that the complaint allegations against the Teamsters also be dismissed.

CONCLUSIONS OF LAW

1. The Respondent, Tecumseh Corrugated Box Company, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent, Excavating, Building Material, Construction Drivers, Race Track Employees, Public Employees, Manufacturing, Processing, Assembling and Installer Employees, Local Union No. 436, a/w the International Brotherhood of Teamsters, and the Charging Party, Paper, Allied-Industrial, Chemical, and Energy Workers International Union, AFL-CIO, CLC (PACE), are labor organizations within the meaning of Section 2(5) of the Act.

3. The above-named Respondents have not engaged in any of the unfair labor practices alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²³

ORDER

The complaint is dismissed.

the hasty manner in which the employer granted recognition to the union and the fact that it had not independently verified the signatures on the authorization cards submitted by the union. However, it is significant to note that the Board did not base its finding of an 8(a)(2) violation solely on these factors. Rather, the Board stressed that its finding was premised on the fact that these factors, in combination with the fact that employees were ordered to attend a meeting with the union during which supervisors remained in attendance and observed employees sign authorization cards, created a coercive atmosphere and gave rise to the violation. As the Board in *Vernitron* noted at p. 465, "the instant recognition granted by [the employer] prevented employees who might have felt pressured by the presence of their supervisors from having the opportunity to take subsequent action to either revoke their authorizations or bring another union into the organizational campaign." Here, the employees were not subjected to any such pressure for, as noted, Moden and the other supervisors immediately left the room after introducing the Teamsters representatives, leaving the employees free to sign or not sign the Teamsters' authorization cards without fear that their actions were being observed.

²³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.